

QA-20611
FHWA-97-2299-27

July 25, 1996

FHWA Docket No. MC-96-18
Federal Highway Administration
Office of the Chief Counsel, HCC-10
Room 4232
400 Seventh Street, S.W.
Washington, DC 20590

LEGS./REGS. DIV.

96 JUL 27 10:50

ADMINISTRATION

RE: Rules of Practice for Motor Carrier Proceedings;
Investigations; Disqualifications and Penalties;
Proposed Rule

Dear Sirs:

I am writing you as an individual interested in the safety of our motoring public and the financial health of insurers who offer markets for trucking businesses. For the last 23 years I have worked in both sides of the insuring arena. As an insurance company representative my responsibilities included the financial and safety evaluation of truckers. Through insurance agency representation, there was the challenge of coordinating the needs of the client trucker, and the needs of the insurance company to know enough about the client in order to assume the financial risk.

Part 362: Safety Ratings:

I would suggest without equivocation, that it would not be in the industries best interest to abolish the Satisfactory and Conditional ratings.

To my knowledge it is still a prime responsibility of the FHWA to,.. "determine the safety fitness of owners and operators of commercial motor vehicles in interstate commerce." You eliminated "safety reviews" back in '94, and left us with "compliance reviews". One could argue that the ability of a motor carrier to keep decent records is considerably less interesting to the public than the ability to operate safely.

You do state in this NPR that,.. "the FHWA places more emphasis on compliance with those regulations that have the greatest immediate and direct impact on safety." You emphasize the concepts of "acute" and "critical". "Acute" is defined as .."regulatory requirements the violation of which would create an immediate risk to persons or property."

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You then define "critical" as,.. "those regulatory requirements the violations of which, if occurring in patterns, would indicate a breakdown in effective control over essential safety functions." Having established some reasonable credibility to your procedure you also state that,.. "The safety ratings are used to prioritize motor carriers for review and focus enforcement resources on carriers with the most serious compliance problems."

Also in your NPR you state, "Safety ratings continue to gain in relative importance in the entire safety program...". The NPR further states, "...decisions are made daily by shippers and insurers on the basis of safety ratings. This is a primary purpose of the ratings as conceived by Congress and implemented by the agency." And you add that within the federally established "safety fitness standard", "The safety ratings had routinely been made available....to assist in risk determinations..."

It has to be suggested that with the elimination of the previous "safety reviews", along with the long lost financial reporting of over 90% of all regulated motor carriers, this last bastion of safety information is vital to "assist in risk determination". Having said that, it is incredulous that your NPR states that as a reason to eliminate two of the three current ratings, is that various sources have actually used the information as clearly intended.

Your comments in the NPR say nothing to negate either the importance of the current ratings or the Congressional intent. You say nothing to justify why there should not be an awareness of the current varying levels of compliance among motor carriers, and the flags that you would use to "prioritize motor carriers for review and focus enforcement resources on carriers with the most serious compliance problems."

There is another disturbing aspect to your NPR in this regard. You state that,.. "If the unsatisfactory rating is to be considered tantamount to a determination that the carrier assigned such rating should not be operating commercial motor vehicles in interstate commerce without appropriate corrective measures, then such a carrier should be well below average and the percentage of carriers earning such a rating ought to be relatively small." You offer no justification for your conclusion that it follows that,.. "the percentage of carriers earning such a rating ought to be relatively small." What if there are a great number of carriers that operate in manners that fit the description of,.. a carrier has inadequate controls that have resulted in violations of federal safety regulations? Didn't you state that was the intent of Congress?

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You seem to state that you intend to reconstruct your "yardstick" for an "unsatisfactory" rating, that would then fulfill your unfounded prophecy of finding a "relatively small" population of offenders.

As previously stated, I would suggest that the elimination of the Satisfactory, and Conditional ratings and softening the qualification for Unsatisfactory ratings, would not be in the interest of safety over our highways. If there are flaws in the ratings there should be corrections of the flaws, but not eliminate the ratings.

Motor Carrier Identification Report:

In item 26 of the form you distinguish between drivers operating within, or beyond, a 100 mile radius. For what it is worth, the insurance industry has traditionally used a 200 mile boundary between local/intermediate and long haul.

Part 364, Subpart B-Civil Penalties:

Under subsection 364.201 there are monetary penalties established for various types of violations. Some such penalties seem woefully inadequate.

Within (c) (1) pertaining to the failure to maintain the prescribed level of financial responsibility there is a fine described as "up to \$10,000 for each violation". Why is the fine not specifically defined ?

If an accident leaves one, or many persons permanently injured then much financial responsibility would be needed to compensate the injured parties. One would think the penalties would be severe enough to guarantee compliance, ie: \$100,000 per violation, payable within 30 days with no appeal. The language further states that the assessment could be applied to each "dispatched" vehicle. Why dispatched ? The financial responsibility requirements as established by the Motor Carrier Act of 1980 does not apply to "dispatched" vehicles, but all vehicles all the time. The penalty should be applied to all commercial vehicles owned or leased by the motor carrier.

Thank you for the opportunity to offer comments.

Sincerely,



Don Hannon

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